

**CIVIL NO. 1:08CV395**

**Defendant.**

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On December 30, 2008, the Magistrate Judge filed a Memorandum and Recommendation in this case containing proposed findings of fact and conclusions of law in support of a recommendation regarding Defendant's

motion to dismiss or, in the alternative, to stay action for referral to the Surface Transportation Board. The parties were advised that any objections to the Magistrate Judge's findings were to be filed in writing within 10 days of service of the Recommendation; the period within which to file objections expired on January 23, 2009.<sup>1</sup> No written objections to the Memorandum and Recommendation have been filed.

After a careful review of the Magistrate Judge's Recommendation, the Court finds that the proposed findings of fact are supported by the record and that the proposed conclusions of law are consistent with current case law. Accordingly, the Court hereby accepts the Magistrate Judge's Recommendation that the Defendant's motion to dismiss be allowed.

**IT IS, THEREFORE, ORDERED** that the Defendant's motion to dismiss is **ALLOWED**, and this action is hereby dismissed without prejudice as preempted.

**IT IS FURTHER ORDERED** that the Defendant's alternative motion to stay is **DENIED** as moot.

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<sup>1</sup> Objections were originally due January 20, 2009; however, Plaintiffs timely requested an extension of time to January 23, 2009, and such was granted. **See Order, filed January 9, 2009.**

Signed: January 26, 2009

A handwritten signature in dark ink, appearing to read 'L. H. Thornburg', is written over a horizontal line.

Lacy H. Thornburg  
United States District Judge

